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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re the Marriage of DAVID and TABITHA BRADWELL.	
DAVID L. BRADWELL, Appellant, v. TABITHA BRADWELL, Respondent.	D059127 (Super. Ct. No. DN139220)

APPEAL from an order of the Superior Court of San Diego County, Gregory W. Pollack, Judge. Affirmed.

David L. Bradwell (Husband) appeals an order denying his motion to set aside or modify a prior child and spousal support order in favor of Tabitha E. Bradwell (Wife). On appeal, he apparently contends the trial court erred by denying that motion because the prior order was based on a clerical error.

FACTUAL AND PROCEDURAL BACKGROUND[1]

On December 19, 2007, the trial court issued an order (2007 Order), making certain findings on Husband's motion for modification of child and spousal support.[2] The court found Husband's income was $2,998 per month. The court stated: "[Husband's] income is used as stated. [Husband] is to provide [Wife] with verification of his current income. . . . The spousal support issue is taken under submission for the Court's review." The court ordered Husband to pay Wife $492.00 per month in child support and deferred ruling on the amount of spousal support he was required to pay Wife.

On December 13, 2010, the trial court issued an order (2010 Order), making certain findings on, and denying, Husband's motion to set aside and modify a prior child and spousal support order.[3] The court stated:

> "Court finds: The alleged error in the 12/19/07 Order is not a clerical error that can be corrected at anytime.
>
> "Court orders: [Husband's] Motion to Set Aside the Support Order is denied as untimely pursuant to [Family Code section] 3691. Moreover, the request to retroactively modify spousal support to

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1 Because Husband fails to include citations to the record on appeal to support most of his statements of fact and procedure in his appellant's opening brief, we do not restate any of those asserted facts and procedure. Rather, we discuss only the two substantive documents contained in the record on appeal.

2 The court also apparently addressed Wife's motion to modify child custody and visitation. The record on appeal does not contain copies of either of the motions filed by Husband or Wife.

3 The record on appeal does not contain a copy of Husband's motion.

> 12/19/07 is barred by [Family Code section] 3653[, subdivision] (a)."

On February 7, 2011, Husband filed an amended notice of appeal challenging the 2010 Order.[4]

DISCUSSION

I

Waiver of Appeal

We conclude Husband has waived his contentions on appeal because he has: (1) not provided an adequate record for us to review his contentions; (2) not provided required citations to the record on appeal in support of his assertions of fact and procedure; and (3) made incomprehensible arguments and an insufficient substantive legal analysis in support of his contentions.

A

We first address the record on appeal Husband provided. In *Denham v. Superior Court* (1970) 2 Cal.3d 557, the court stated:

> "[I]t is settled that: 'A judgment or order of the lower court is *presumed correct*. All intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown [by the appellant]. This is not only a general principle of appellate practice but an ingredient of the constitutional doctrine of reversible error.' " (*Id*. at p. 564.)

"A necessary corollary to this rule is that *if the record is inadequate for meaningful review, the appellant defaults* and the decision of the trial court should be affirmed."

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4 Wife has not filed a respondent's brief in this case.

(*Mountain Lion Coalition v. Fish & Game Com.* (1989) 214 Cal.App.3d 1043, 1051, fn. 9, italics added.) Alternatively stated, "a record is inadequate, and appellant defaults, if the appellant predicates error only on the part of the record he provides the trial court, but ignores or does not present to the appellate court portions of the proceedings below which may provide grounds upon which the decision of the trial court could be affirmed." (*Uniroyal Chemical Co. v. American Vanguard Corp.* (1988) 203 Cal.App.3d 285, 302.) "The burden of affirmatively demonstrating error is on the appellant." (*Fundamental Investment etc. Realty Fund v. Gradow* (1994) 28 Cal.App.4th 966, 971.) The appellant has the burden to provide an adequate record on appeal to allow the reviewing court to assess the purported error. (*Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295; *Gee v. American Realty & Construction, Inc.* (2002) 99 Cal.App.4th 1412, 1416.) If the record on appeal does not contain all of the documents or other evidence submitted to the trial court, a reviewing court will "decline to find error on a silent record, and thus infer that substantial evidence" supports the trial court's findings. (*Haywood v. Superior Court* (2000) 77 Cal.App.4th 949, 955.)

As noted above, Husband provided a record on appeal consisting of only two substantive documents: (1) the 2007 Order; and (2) the 2010 Order. He has not provided a reporter's transcript of any hearings related to those orders, and has not provided copies of any of the underlying motions or the parties' other pleadings and papers the trial court considered in making its decisions. Because the record on appeal is inadequate for us to conduct any meaningful review of the 2010 Order, we conclude Husband has defaulted and/or waived his appellate contentions. (*Mountain Lion Coalition v. Fish & Game*

Com., *supra*, 214 Cal.App.3d at p. 1051, fn. 9; *Uniroyal Chemical Co. v. American Vanguard Corp.*, *supra*, 203 Cal.App.3d at p. 302; *Maria P. v. Riles*, *supra*, 43 Cal.3d at p. 1295; *Gee v. American Realty & Construction, Inc.*, *supra*, 99 Cal.App.4th at p. 1416; *Haywood v. Superior Court*, *supra*, 77 Cal.App.4th at p. 955.)

B

We also note Husband has, for the most part, not provided citations to the (inadequate) record on appeal in support of his assertions of fact and procedure in his appellant's opening brief. California Rules of Court, rule 8.204(a)(1)(C),[5] provides that an appellate brief must "[s]upport any reference to a matter in the record by a citation to the volume and page number of the record where the matter appears." Rule 8.204(a)(2)(C) provides that an appellant's opening brief must "[p]rovide a summary of the significant facts limited to matters in the record."

Statements of fact not part of, or supported by citations to, the record on appeal are improper and cannot be considered on appeal. (Rules 8.204(a)(1)(C), 8.204(a)(2)(C); *Pulver v. Avco Financial Services* (1986) 182 Cal.App.3d 622, 632; *Kendall v. Barker* (1988) 197 Cal.App.3d 619, 625.) We disregard any statements of fact or procedure set forth in Husband's brief that are outside of the record on appeal. (*Pulver*, at p. 632; *Kendall*, at p. 625; *Gotschall v. Daley* (2002) 96 Cal.App.4th 479, 481, fn. 1.) Husband's references to a court order issued on February 14, 2008, must be disregarded because it is not part of the record on appeal.

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5 All rule references are to the California Rules of Court.

Furthermore, to the extent Husband's assertions of fact and procedure ostensibly refer to matters within the record on appeal, other than two innocuous citations to the 2010 Order and one to the 2007 Order, his brief does *not* contain *any citations* to the appellate record in violation of rule 8.204(a)(1)(C). As in *Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, at page 1246, Husband's briefs are substantially "devoid of citations to the [record on appeal] and are thus in dramatic noncompliance with appellate procedures." "It is the duty of a party to support the arguments in its briefs by appropriate reference to the record, which includes providing exact page citations." (*Bernard v. Hartford Fire Ins. Co.* (1991) 226 Cal.App.3d 1203, 1205.) "If a party fails to support an argument with the necessary citations to the record, that portion of the brief may be stricken and the argument deemed to have been waived." (*Duarte v. Chino Community Hospital* (1999) 72 Cal.App.4th 849, 856; see also *City of Lincoln v. Barringer* (2002) 102 Cal.App.4th 1211, 1239; *Guthrey v. State of California* (1998) 63 Cal.App.4th 1108, 1115.) Because Husband's briefs do *not* contain *any citations* to the record on appeal to support his assertions of fact and procedure and contentions (except for three innocuous citations to the 2007 and 2010 Orders), we consider his contentions on appeal to have been waived. (*Nwosu*, at p. 1247; *City of Lincoln*, at p. 1239; *Duarte*, at p. 856; *Guthrey*, at p. 1115.) Finally, we note the fact that Husband filed this appeal in propria persona ("pro per") does not exempt him from compliance with established appellate rules. (*Nwosu*, at pp. 1246-1247 [pro per litigants must follow the same procedural rules as attorneys].) We conclude Husband has not carried his burden on appeal to show the trial court erred in issuing its 2010 Order.

C

Finally, we conclude Husband has waived his contentions on appeal by making incomprehensible arguments and an insufficient substantive legal analysis in support of his contentions. "The burden of affirmatively demonstrating error is on the appellant." (*Fundamental Investment etc. Realty Fund v. Gradow*, *supra*, 28 Cal.App.4th at p. 971.) "An appellant must provide an argument and legal authority to support his contentions. This burden requires more than a mere assertion that the judgment is wrong. 'Issues do not have a life of their own: If they are not raised or supported by argument or citation to authority, [they are] . . . waived.' [Citation.] It is not our place to construct theories or arguments to undermine the judgment and defeat the presumption of correctness. When an appellant fails to raise a point, or asserts it but fails to support it with reasoned argument and citations to authority, we treat the point as waived." (*Benach v. County of Los Angeles* (2007) 149 Cal.App.4th 836, 852.)

"Where a point is merely asserted by [appellant] without any [substantive] argument of or authority for its proposition, it is deemed to be without foundation and requires no discussion." (*People v. Ham* (1970) 7 Cal.App.3d 768, 783, disapproved on another ground in *People v. Compton* (1971) 6 Cal.3d 55, 60, fn. 3.) "Issues do not have a life of their own: if they are not raised or supported by [substantive] argument or citation to authority, we consider the issues waived." (*Jones v. Superior Court* (1994) 26 Cal.App.4th 92, 99; see also *Landry v. Berryessa Union School Dist.* (1995) 39 Cal.App.4th 691, 699-700 ["[w]hen an issue is unsupported by pertinent or cognizable legal argument it may be deemed abandoned and discussion by the reviewing court is

unnecessary"]; *Ochoa v. Pacific Gas & Electric Co.* (1998) 61 Cal.App.4th 1480, 1488, fn. 3 [contention was deemed waived because "[a]ppellant did not formulate a coherent legal argument nor did she cite any supporting authority"]; *Colores v. Board of Trustees* (2003) 105 Cal.App.4th 1293, 1301, fn. 2 ["[t]he dearth of true legal analysis in her appellate briefs amounts to a waiver of the [contention] and we treat it as such"]; *Bayside Auto & Truck Sales, Inc. v. Department of Transportation* (1993) 21 Cal.App.4th 561, 571.) Appellants acting in propria persona are held to the same standards as those represented by counsel. (See, e.g., *City of Los Angeles v. Glair* (2007) 153 Cal.App.4th 813, 819.) Because Husband has not presented any comprehensible, or coherent, substantive legal arguments supported by citations to the record and legal authorities, we need not discuss the merits of his appellate contentions and conclude he has waived his contentions that the trial court erred by issuing the 2010 Order.

II

Merits of Appellate Contentions

Assuming arguendo Husband did not waive his appellate contentions in the manner discussed above, we nevertheless would conclude he has not carried his burden on appeal to persuade us the trial court erred by issuing the 2010 Order. Construing Husband's brief as a whole, it appears the gist of his appellate contentions is that the trial court erred by issuing an order on February 14, 2008, that apparently awarded Wife spousal support based on Husband's monthly income of $3,133. However, as noted above, we disregard any references to that 2008 order because it is not included in the record on appeal. In any event, we presume Husband did not timely appeal that order (or,

if he did, it was unsuccessful). Accordingly, when the trial court issued the 2010 Order, the 2008 order was final and could not be set aside. Furthermore, Husband does not present any substantive legal analysis showing the trial court erred by declining to retroactively modify his support obligations under the 2008 order and/or 2007 Order. He does not show either of those prior orders were the result of any clerical error. We conclude the trial court did not err in issuing the 2010 Order.

DISPOSITION

The order is affirmed.

McDONALD, J.

WE CONCUR:

HUFFMAN, Acting P. J.

McINTYRE, J.